

EXHIBIT B

ANDREW W. STUMPFF
COHEN vs JAFFE

February 09, 2017
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2	EASTERN DISTRICT OF MICHIGAN	2	
3		3	WITNESS
4	NEAL COHEN, DARREN CHAFFEE, and SSL ASSETS, LLC,	4	Andrew W. Stumpff
5	Plaintiffs,	5	EXAMINATION
6	vs.	6	By Mr. Hengeveld.....Page 5
7	JAFFE, RAITT, HEUER & WEISS, P.C., JEFFREY M. WEISS, LEE B. KELLERT and DEBORAH L. BAUGHMAN,	7	
8		8	
9	Defendants,	9	
10	JAFFE, RAITT, HEUER & WEISS, P.C.	10	
11	Third Party Plaintiff,	11	
12	vs.	12	
13	COBE CAPITAL, LLC,	13	
14	Third Party Defendant.	14	
15		15	
16	THE DEPOSITION OF ANDREW W. STUMPFF	16	
17		17	
18	DEPONENT: Andrew W. Stumpff	18	
19	DATE: Thursday, February 9, 2017	19	
20	TIME: 8:02 a.m.	20	
21	LOCATION: Plunkett Cooney 150 West Jefferson, Suite 800 Detroit, Michigan 48226	21	
22		22	
23	REPORTER: Kelli A. Murphy, CSR-7768, B.S.	23	
24		24	
25		25	
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1	APPEARANCES:	1	EXHIBITS
2		2	
3	JEFFREY J. GOULDER, ESQ. (AZ010258) Stinson Leonard Street LLP 1850 North Central Avenue, Suite 2100 Phoenix, Arizona 85004-4584 602.279.1600 jeffrey.goulder@stinson.com	3	STUMPFF
4	Appearing on behalf of Plaintiffs.	4	Deposition Exhibit Description Marked
5		5	=====
6		6	Exhibit 55 07/05/16 Letter/Attachment 9 (P0037273-37279)
7		7	
8		8	Exhibit 56 Multi-Page Document 17
9	JEFFREY S. HENGEVELD, ESQ. (P66029) Plunkett Cooney 38505 Woodward Avenue, Suite 2000 Bloomfield Hills, Michigan 48304 248.594.8202 jhengeveld@plunkettcooney.com	9	Exhibit 57 Expert Report of 80 Jordan Schreier
10	Appearing on behalf of Defendants.	10	
11		11	
12		12	
13		13	*****
14		14	
15		15	
16	*	16	
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1 Detroit, Michigan	2 Thursday, February 9, 2017	1 purchase agreement.
3 About 8:02 a.m.		2 Q All right. Did that have anything to do with controlled
4		3 group liability?
5 * * * *		4 A No. It didn't have anything to do with controlled group
6 THE REPORTER: Raise your right hand, please.		5 liability. There's a tangential relation between the
7 MR. STUMPFF: (Witness complies.)		6 ideas of controlled group liability, and what was at
8 THE REPORTER: Do you swear or affirm the		7 issue there, because, as I recall, this question went to
9 testimony you're about to give is the truth, the whole		8 past service, and -- under the definition of a plan --
10 truth, and nothing but the truth?		9 it was serviced with your, quote, employer.
11 MR. STUMPFF: I do.		10 And part of the issue was around ambiguity and
12 THE REPORTER: Thank you.		11 vagueness around the definition of "employer," and that,
13 EXAMINATION		12 I think, included a controlled group concept, at the
14 BY MR. HENGEVELD:		13 time, but it wasn't really central to the case.
15 Q Can you please state your full name?		14 Q What specific issue were you retained to give opinions
16 A Sure. Andrew Wayne Stumpff.		15 about in that case?
17 Q Mr. Stumpff, my name is Jeff Hengeveld, and I represent		16 A Whether the language in the transaction agreement
18 the defendants in this case. Have you given a		17 required that the employees -- who became employees of
19 deposition before?		18 the acquiror -- were entitled to receive past service
20 A Yes, I have.		19 credit for the acquiror's pension plan for their service
21 Q How many times have you been deposed?		20 prior to the acquisition.
22 A Just once.		21 Q Were you engaged to critique the drafting of that
23 Q Okay. In what case was that deposition given?		22 language by -- sorry, strike that.
24 A The -- I can't remember the full name of the case, but		23 Q Were you engaged to critique the attorney's
25 it was a case in which I was an expert, and the		24 drafting of that language, or were you engaged to opine
		25 on the language, itself?
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1 defendant's party's name was Liberty Insurance.	2 Q Okay. And that's the Moyle versus --	1 A Um, I think that there was an element of both, as I
3 A Yes.		2 recall. You'll have to forgive me. I, perhaps, should
4 Q -- Liberty case?		3 have reviewed that.
5 A Yes.		4 But my recollection is that there were
6 Q When did you give that deposition?		5 elements of both, and that part of the issue was that
7 A I'm going to guess four years ago, roughly.		6 there was a, sort of, a typical standard for drafting
8 Q And that case is currently pending?		7 provisions relating to providing service, and this
9 A No. It was decided on summary judgment, again, probably		8 departed from that.
10 three or four years ago.		9 And that, based on that departure, the
11 Q Okay. Was that the only case in which you've previously		10 language should be read to provide past service. That's
12 served as an expert?		11 my best recollection of what it was.
13 A Yes. I've been consulted as a potential expert in other		12 Q There were no claims against a lawyer --
14 cases, but that's the only case I think that I've ever		13 A No.
15 been retained as an expert, actually retained.		14 Q -- in that case?
16 Q Can you tell me what that Moyle versus Liberty case was		15 Aside from sitting for a deposition in that
17 about?		16 case, did you have any other involvement?
18 A Yes. That also involved a merger acquisition context,		17 A Sitting for a deposition, and then, I think, at some
19 and I was an expert for the plaintiffs, and the issue		18 point, I, sort of, discussed the case with the lawyers,
20 had to do with whether past service credit should be		19 and that's it. There was nothing further. I did not do
21 granted to employees of the company that was acquired,		20 a report. The case did not go to trial.
22 and the acquiror's plans for service prior to the		21 Q Again, the case was dismissed by summary disposition --
23 acquisition.		22 A Yes.
24 And it was a question of the drafting of the		23 Q -- to the best of your recollection?
25 transaction document, which, I believe, was a stock		24 A Yes.
		25 Q Did you say that you have served in some consulting role

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1 as an expert?	1 think Stinson got a recommendation of our firm,
2 A No. What I meant to say is I was consulted about the	2 generally -- and possibly including my name, but
3 possibility of being an expert several other times, but	3 possibly including other names -- from a lawyer in
4 I never -- other than that case -- proceeded to be	4 Kansas City, and then, ultimately, sort of, narrowed in
5 retained as an expert.	5 on me.
6 Q Okay. When were you first retained by the Stinson law	6 MR. GOULDER: Let's go off the record for just
7 firm, in this case?	7 one second.
8 A Well, to the best of my recollection, it was late spring	8 MR. HENGEVELD: Okay.
9 of last year, or, perhaps, early summer. I'd say	9 MR. GOULDER: Let me just step out with
10 sometime between April and June, but that's just to the	10 Andrew.
11 best of my recollection.	11 MR. HENGEVELD: Sure.
12 MR. HENGEVELD: I'm handing you what I've	12 (Momentarily off the record.)
13 marked as Exhibit No. 55.	13 BY MR. HENGEVELD:
14 (Marked for identification:	14 Q How many telephone conversations did you have with
15 Deposition Exhibit No. 55.)	15 Jeff Goulder, or anyone else from the Stinson law firm,
16 THE WITNESS: Sure. (Witness reviewing	16 prior to July of 2016?
17 document.)	17 A I'm going to guess two.
18 BY MR. HENGEVELD:	18 Q Do you know how long those telephone conversations
19 Q Exhibit 55 is a series of documents that include -- on	19 lasted?
20 the first two pages -- a letter to you, from	20 A About 15 to 30 minutes. I'm guessing.
21 Jeff Goulder, on July 5, 2016.	21 Q Each?
22 A Um-hmm.	22 A Yeah.
23 Q It looks like it's an engagement letter.	23 Q Did you agree to serve as an expert after the first
24 Is that what it looks like to you?	24 telephone conversation?
25 A Yes, it does.	25 A I don't remember. My recollection is likely not.
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1 Q Were you contacted by either Jeff Goulder, or another	1 Q Okay. Why not?
2 member of the Stinson law firm, prior to July of 2016?	2 A After the first conversation, I can't really accept any
3 A Yes. This would have been after several conversations,	3 representation, of any sort, without checking internally
4 conflict checks, and so forth.	4 for various things.
5 Q And so you think you were first contacted in early	5 Q Notably a conflict check?
6 spring of 2016?	6 A Notably, yes.
7 A No, not -- not early spring. As I said, sometime	7 Q Did you form any conclusions about Jaffe, Raitt's -- or
8 between probably April and June, to the best of my	8 the lawyer at Jaffe, Raitt's actions after that first
9 recollection. If I check my records, I could give you a	9 telephone conversation?
10 better sense, but that's my best recollection.	10 MR. GOULDER: At any time after, including
11 Q And what records would you have to check to determine	11 through today?
12 that?	12 THE WITNESS: Um-hmm.
13 A E-mails, internal e-mails.	13 MR. HENGEVELD: No. I want to be more narrow.
14 Q Did you know Jeff Goulder before --	14 BY MR. HENGEVELD:
15 A No.	15 Q After the initial telephone discussion with
16 Q -- he reached out to retain you?	16 Jeff Goulder, did you form any conclusions about the
17 A No.	17 conduct of the defendants in this case?
18 Q Did you know anyone at the Stinson law firm, prior to	18 A No.
19 being retained, in this case, as an expert?	19 Q What about after the -- immediately after the second
20 A I did. I know one of their former partners fairly well,	20 conversation with Jeff Goulder, did you form any
21 a man named Tom Brous. I knew him for many years.	21 opinions about the conduct of the defendants in this
22 Q Did Tom Brous reach out to you, at all, regarding this	22 case?
23 case?	23 A No.
24 A No. I'm not entirely certain how Stinson came to us.	24 Q When did you first form opinions or conclusions about
25 My recollection is that Stinson first contacted -- I	25 the conduct of the defendants in this case?

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1 A I first formed a conclusion after reviewing the 2 documents that were sent to me by Stinson in connection 3 with the case.	1 Q And did your conversation with him reveal that he was 2 familiar with the facts, and how that differed? 3 MR. GOULDER: Let me just caution you on that, 4 Andrew. Under the rules, Mr. Hengeveld is entitled to 5 know what facts my firm conveyed to you -- 6 THE WITNESS: Um-hmm.
4 Q You indicated that you had two telephone conversations 5 with Jeff Goulder prior to July of 2016?	7 MR. GOULDER: -- and what assumptions we asked 8 you to make -- 9 THE WITNESS: Um-hmm.
6 A To the best of my recollection.	10 MR. GOULDER: -- and what your billing 11 arrangement is with us.
7 Q To the best of your recollection?	12 THE WITNESS: Right.
8 A Yes.	13 MR. GOULDER: So, I believe, Mr. Hengeveld's 14 question goes to what facts Mr. McKnight conveyed to 15 you, and that's a fair question, but to the extent you 16 had conversations that went beyond that, please let us 17 know, and don't answer.
9 Q Did you have any conversations with anyone else at the 10 Stinson law firm, regarding this case, prior to July of 11 2016?	18 THE WITNESS: Okay. I think -- 19 Well, why don't you repeat your previous 20 question?
12 A I don't believe so.	21 MR. HENGEVELD: Sure. Can you read that back?
13 Q Have you ever spoken to any other attorney, regarding 14 this case, at the Stinson --	22 THE REPORTER: Yes.
15 A Yes.	23 (Whereupon the question was read 24 back by the court reporter as follows:
16 Q -- law firm --	25 QUESTION: And did your conversation with him
17 A Yes.	
18 Q -- other than Jeff Goulder?	
19 A Yes.	
20 Q And who was that?	
21 A Michael Vincent and Phil McKnight.	
22 Q In total -- so this being including the two 23 conversations prior to July 2016 -- in total, how many 24 conversations did you have with Jeff Goulder regarding 25 this case?	
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1 A I'm sorry. Cumulatively to date?	1 reveal that he was familiar with the facts, and 2 how that differed?)
2 Q Sure.	3 THE WITNESS: My conversation with him did not 4 produce any facts different than what I'd already been 5 provided by Stinson.
3 A Perhaps, 12. On that order of magnitude.	6 BY MR. HENGEVELD:
4 Q Cumulatively, how many conversations have you had with 5 Michael Vincent regarding this case?	7 Q Okay. Are you relying upon the facts provided by, or 8 discussed with -- strike that.
6 A Perhaps 12, a dozen. That's subject to a large margin 7 of error.	9 Are you relying upon the facts provided to 10 you, if any, by Mr. McKnight for the opinions that you 11 reached in this case?
8 Q And were those conversations exclusively with 9 Michael Vincent, or are you including conversations 10 where Jeff Goulder might be a part of those 11 conversations?	12 A No.
12 A Okay. So to break it down, these are -- it's all order 13 of magnitude, so probably the numbers are all the same, 14 since they're all the same order of magnitude -- but, 15 let's say, a dozen just with Michael; three or four with 16 both of them; and, perhaps, six with just Jeff.	13 Q During any of the conversations with Jeff Goulder and 14 Michael Vincent, were you asked to make any assumptions 15 about the facts, in this case, or assumptions, in 16 general, about this case?
17 Q And how many conversations did you have with 18 Phil McKnight?	17 A No.
19 A One.	18 Q Have you made any assumptions in formulating your 19 opinions in this case?
20 Q What was the purpose of that conversation?	20 A Only where I expressly say the word "assuming."
21 A To -- I realized -- I was under the understanding that 22 he was also familiar with the facts of this case, and I 23 wanted to get a sense of whether his understanding of 24 the facts, and what had happened, was any different from 25 mine.	21 Q Okay.
	22 A Yeah. Only where I expressly say the word "assuming."
	23 Q And that's in your expert --
	24 A In the --
	25 Q -- report --

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1 A -- report, yes.	1 specific arrangements with senior executives and stock
2 Q -- which we'll look at in a minute?	2 options and employment agreements.
3 A Sure.	3 Q Thank you.
4 MR. HENGEVELD: I'm handing you what I've	4 A Um-hmm.
5 marked as Exhibit 56.	5 Q Going back to Exhibit 56, in paragraph 2, does
6 (Marked for identification:	6 paragraph 2 give us a, kind of, summary of your practice
7 Deposition Exhibit No. 56.)	7 since you graduated from law school?
8 THE WITNESS: Thank you.	8 A Yes.
9 MR. GOULDER: Thank you.	9 Q What was the reason that you took the three-year hiatus
10 BY MR. HENGEVELD:	10 from practicing law in 2004 to 2006, during which you
11 Q I guess, what is Exhibit 56?	11 studied graduate computational biochemistry?
12 A My expert report.	12 A That was a combination of a family change. My wife, at
13 Q Okay. Looking at the first page of Exhibit 56, under	13 the time, very much wanted to move back to Michigan and
14 the section "Qualifications," in paragraph 1:	14 I agreed. It was a combination of that, and being a
15 Does paragraph 1 explain what your current	15 little burned out from the transactional practice of
16 employment is?	16 law, and wanting to try something different.
17 A It does, except that the University of Michigan is	17 Q Did you obtain your degree in computational --
18 not -- this year -- offering this course, so I'm not	18 A I did not.
19 teaching this particular academic year.	19 Q -- biochemistry?
20 And, also, the last sentence has changed since	20 A I did not.
21 I wrote this. I have now become a nonequity shareholder	21 Q In paragraph 3, the last sentence -- sorry, back to
22 of Butzel Long, instead of "Of Counsel."	22 Exhibit 56, so it's clear, for the record -- in
23 Q Currently, what percentage of your time is spent	23 paragraph 3, under "Qualifications," the last sentence
24 practicing law versus spent in academia?	24 states:
25 A About 50 percent for each.	25 I estimate that during the course of my
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1 Q For how long has that been true that you've been	1 career, I've been professionally involved in
2 50 percent practicing and 50 percent in academia?	2 approximately 100 completed acquisitions valued at
3 A About eight years.	3 at least \$10 million each.
4 Q Of the 50 percent of time you spent actually practicing	4 Do you see that?
5 law, is that practicing exclusively in ERISA law?	5 A Yes.
6 A No. It's ERISA and employee benefits -- or, I'm	6 Q How many, if any, of those acquisitions involved clients
7 sorry -- executive compensation.	7 coming to you to ask to have the acquisitions structured
8 So can I just clarify that?	8 in such a way to avoid controlled group liability?
9 Q Sure.	9 A This is going to be an estimate -- because one would
10 A ERISA can be used as a synonym when you're describing	10 have to enumerate all of these transactions going back
11 practice types as employee benefits.	11 30 years -- but I am going to estimate, perhaps, a third
12 So when answering your question, when you	12 of them, say 30, involved situations where that was an
13 asked if I practice exclusively in ERISA, I'm	13 important issue. I -- let's modify that to say 20 to
14 interpreting that to mean employee benefits, and I'm	14 30.
15 answering that I spend it practicing employee benefits	15 Q So to be clear, have you had clients come to you with
16 and executive compensation.	16 about 20 or 30 acquisitions where they have asked you to
17 Q Can you briefly summarize, then, what you mean by the	17 structure an acquisition of a company that had a
18 differences in the employee benefits side versus the	18 multiemployer pension plan in such a way that the
19 executive compensation side?	19 acquiror would not have controlled group liability
20 A Sure. Employee benefits tends -- and this is all a	20 attached to any of the other entities that the acquiror
21 matter of how law firms organize themselves in the US --	21 might also own?
22 employee benefits tends to refer to more broad-based	22 A So I have to clarify two things. It's just struck me,
23 programs like retirement plans and health insurance	23 right now, that you're specifically asking about
24 plans.	24 multiemployer plan liabilities, as opposed to Title IV
25 Executive compensation tends to refer to	25 liability, generally, under ERISA.

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<p>1 The 20 to 30 relates to Title IV liability, 2 generally, including multiemployer plans, but also 3 single-employer plans. For multiemployer plans, that's 4 less common, so it's probably more like 10. So I want 5 to clarify that.</p> <p>6 Q Thank you.</p> <p>7 A The second thing, in response to your most recent 8 question, you've asked how many transactions have 9 clients specifically asked that we structure the 10 transaction to avoid controlled group liability.</p> <p>11 Q Um-hmm.</p> <p>12 A And that's very few in the sense of the client having to 13 put the question that way, as opposed to "Can you tell 14 us whether we will have controlled group liability?"</p> <p>15 But, I think, if you read your question 16 broadly to include that, then I would say, roughly, 10 17 on the multiemployer side, and 20 to 30 Title IV, 18 altogether.</p> <p>19 Q Do the Title IV plans have the same law applicable to it 20 regarding controlled group liability?</p> <p>21 A Yes. Multiemployer pension plans are a subset of 22 Title IV.</p> <p>23 Q When is the last time that you had a client retain you 24 with regard to an acquisition that involved an issue of 25 avoiding controlled group liability?</p>	<p>1 been unaware of at the time?</p> <p>2 Q That's it. That's -- yeah, that's --</p> <p>3 MR. GOULDER: Answer that one.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. HENGEVELD:</p> <p>6 Q That's the question that I would like for you to answer.</p> <p>7 A Okay. No.</p> <p>8 Q Going back to Exhibit No. 56, in Section -- I'm 9 referring you to Section II, "Documents Reviewed in 10 Preparation of Expert Opinion."</p> <p>11 Are the documents enumerated in that section, 12 in numbers 1 to 18, the only documents that you have 13 looked at in order to form your opinions in this case?</p> <p>14 A As of now?</p> <p>15 Q Yes.</p> <p>16 A No.</p> <p>17 Q What other documents, in addition to those listed in 18 Exhibit 56, have you reviewed in order to form your 19 opinions in this case?</p> <p>20 A Well -- so you're saying in order to form my opinions. 21 So these are the documents that I had reviewed 22 as of the time I read this report. In order to form the 23 opinion that I -- the updated opinion that I have, as of 24 today, I have reviewed documents since then.</p> <p>25 I won't be able, from memory, to recite all of</p>
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<p>1 A Let me think. Four years ago.</p> <p>2 Q Have you ever had a client, in which you advised about 3 an acquisition, have a controlled group -- as a result 4 of the acquisition -- that you were unaware of?</p> <p>5 MR. GOULDER: I'm sorry. Can I get that 6 question back?</p> <p>7 THE REPORTER: Yes.</p> <p>8 MR. GOULDER: I didn't follow it. 9 (Whereupon the question was read 10 back by the court reporter as follows: 11 QUESTION: Have you ever had a client, in which 12 you advised about an acquisition, have a 13 controlled group -- as a result of the 14 acquisition -- that you were unaware of?)</p> <p>15 THE WITNESS: Um --</p> <p>16 BY MR. HENGEVELD:</p> <p>17 Q Do you understand the question?</p> <p>18 A Well, I guess, to make sense of it, I have to assume you 19 mean that I was unaware of it until later?</p> <p>20 Because if I was unaware of it, and I'm still 21 unaware of it, then, obviously, I don't know.</p> <p>22 Q Um --</p> <p>23 A So you're asking:</p> <p>24 Did I later find out that a transaction I 25 structured resulted in a controlled group that I had</p>	<p>1 them, but, for example, they include additional 2 depositions of Mr. Chaffee, Mr. Cohen, and Mr. Schreier. 3 And, I believe, I also did look at the other 4 expert reports filed by the defendant, and all of the 5 exhibits to those.</p> <p>6 Q Has a review of those depositions, and the defendants' 7 expert reports, changed your opinions that you've 8 expressed in Exhibit 56 at all?</p> <p>9 A No.</p> <p>10 Q Did you review just Jordan Schreier's expert report, in 11 this case, or did you review the other two expert 12 reports as well?</p> <p>13 A The other two as well.</p> <p>14 Q What was your purpose in reviewing those expert reports?</p> <p>15 A To see if there was anything that would change my 16 opinion.</p> <p>17 Q Is there any document, or other piece of evidence that 18 you've asked for, that you have not been given, in order 19 to form your opinions?</p> <p>20 A The only thing I mentioned, that I hadn't received, was 21 our expert report by Mr. Geddes, but that turns out it's 22 not related to -- my understanding is it does not relate 23 to anything in my report, or my opinion.</p> <p>24 Q What was the reason you were asking for Mr. Geddes' 25 report?</p>

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1 A Completeness.	1 A No.
2 Q Did you review, or ask for, the report from the other	2 Q Do you know any of the other attorneys at the Jaffe law
3 damage expert in -- on behalf of plaintiffs?	3 firm?
4 A No.	4 A I met a couple during the meeting we just mentioned,
5 Q Do you know who Jordan Schreier is?	5 whose names I'm afraid I can't recite.
6 A I've met him once.	6 Q How many hours did you spend either reviewing documents,
7 Q Where was that meeting?	7 or preparing the expert report that's Exhibit No. 56?
8 A That was in a meeting at a restaurant in Ann Arbor.	8 A I could give you a precise answer if I checked my time
9 Q What was the purpose of that?	9 records, so this will have to be a guess.
10 A The purpose of the meeting was the law firm I was	10 Between reviewing documents, and preparing the
11 previously a part of was -- at that point, we'd been	11 report, I'm going to guess 50 is an order of magnitude.
12 approached by Butzel, and by other firms about a merger,	12 Q Of those 50, how many hours were spent reviewing the
13 and we were talking to other firms to see whether -- if	13 documents that are listed on Exhibit 56, in
14 other people were also interested before we made a	14 Subsection II, "Documents Reviewed in Preparation of
15 decision.	15 Expert Opinion"?
16 So we were talking with Mr. Schreier about	16 A So 50 is a guess. Of whatever the number actually is,
17 whether Dickinson Wright would be interested in working	17 I'm going to guess about 40 percent. So if the
18 with our firm.	18 denominator is 50, that would be 20 hours.
19 Q Do you have an opinion as to whether Jordan Schreier is	19 Q In this case, there's been invoices from Butzel Long
20 a qualified ERISA, or standard of care expert?	20 from you for August 2016 and September 2016. Did you
21 A I have no basis to know.	21 send out invoices since September of 2016?
22 Q Do you know Jeff Weiss?	22 A I would have for sure, yeah.
23 A I do not.	23 Q Did you send out invoices on a monthly basis?
24 Q Do you know Deb Baughman?	24 A We -- that is our practice.
25 A I have met her at least twice, yeah.	25 Q And that is, indeed, what occurred -- what occurred in
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1 Q What was -- what were those meetings, and what were the	1 this case?
2 occasion for those meetings?	2 A I can't tell you without checking the records, but I
3 A So in Deb's case, I have met her once, or possibly	3 have no reason to believe, otherwise.
4 twice, at Bar Association functions. And then one of	4 MR. HENGEVELD: Could we go off the record a
5 the other meetings was exactly the same circumstances as	5 minute?
6 the meeting in which I met Mr. Schreier, but involving	6 (Off-the-record discussion.)
7 Jaffe.	7 BY MR. HENGEVELD:
8 Q That is, you were considering taking your practice to	8 Q Since issuing your report -- that being Exhibit 56 --
9 the Jaffe law firm?	9 how many hours did you spend on this case?
10 A That's correct.	10 A Well, I'd love to be able to check the records to give
11 Q How long ago was that?	11 you an exact answer, so this will have to be a guess
12 A This was -- this is 2017. I am going to guess	12 again. The report was issued in early December. I'm
13 two years -- roughly, two years ago.	13 going to guess 30 since then, 20 to 30.
14 Q Was there a particular reason that you decided to go	14 Q How many telephone conversations have you had with
15 with the Butzel law firm versus the Jaffe law firm?	15 Jeff Goulder or Michael Vincent after issuing your
16 A There were a number of particular reasons.	16 report?
17 Q Does any of the reasons that you did not take your	17 A On the order of five.
18 practice to the Jaffe law firm have to do with the	18 Q What did you do to prepare for your deposition today?
19 standard of practice as it relates to this case?	19 A I reviewed all the documents and I talked with
20 A No. We never heard of this case at the time.	20 Mr. Goulder.
21 Q Does any of the reasons that you did not take your	21 Q You said "reviewed all the documents." Are you
22 practice to the Jaffe law firm have to do with the way	22 referring to those documents listed in your report, as
23 in which the firm practices law, in general?	23 well as the depositions you mentioned, as well as the
24 A No.	24 defendants' expert reports in this case?
25 Q Do you know Lee Kellert?	25 A As well as my own report, yes.

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<p>1 Q How long did you meet with Mr. Goulder, or talk with 2 Mr. Goulder, prior, in preparation for your deposition 3 today?</p> <p>4 A I met with him for, perhaps, 30 minutes yesterday. And 5 you asked "or talk" with him, and I think during the 6 additional phone calls, probably another 10 or 7 15 minutes.</p> <p>8 Q Back to Exhibit 56, I'm turning your attention to 9 page number 4.</p> <p>10 A Um-hmm.</p> <p>11 Q Under Subsection IV -- sorry -- under Section IV, 12 Subsection A, paragraph number 1, you state that: 13 Based on the documents I have reviewed, it 14 appears that Jaffe, Raitt did not carefully identify its 15 client at the time of the acquisition. 16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q What documents, in particular, lead you to conclude that 19 Jaffe, Raitt did not carefully identify its client at 20 the time of the acquisition?</p> <p>21 A For this conclusion, the documents were the depositions 22 of the Jaffe lawyers, and the exhibits to those 23 depositions.</p> <p>24 Q Do you recall any document, in particular, that was an 25 exhibit to those depositions?</p>	<p>1 Q You do not agree with that?</p> <p>2 A I do not agree with that.</p> <p>3 Q What is your opinion with regard to the requirement that 4 a lawyer and the defendants, in this case, in 5 particular, have a written engagement letter with their 6 clients?</p> <p>7 A So you're using the word "requirement" without having 8 defined it. Your previous question was "standard of 9 care." My view is strong that the standard of care is 10 that you should have a written engagement letter. 11 If you mean a requirement elsewhere, I need to 12 know what you mean by that.</p> <p>13 Q What is the basis for your conclusion that the standard 14 of care requires a written engagement letter?</p> <p>15 A My 30 years of practice in trying to make sure that both 16 we, and the lawyer -- we and our client know exactly who 17 is representing whom as to what.</p> <p>18 Q So is that based upon your particular practice over 19 30 years?</p> <p>20 A My practice, and the standards of all the firms I've 21 been associated with.</p> <p>22 Q Can you identify either a Model Rule of Professional 23 Conduct, or a statute, or caselaw, or some other 24 authority, that requires a lawyer to have a written 25 engagement letter with a client?</p>
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<p>1 A My recollection is that the -- there was an engagement 2 letter produced during one of the -- during the course 3 of one of the depositions that was attached, and so that 4 document, as well as the answers, I believe, in 5 Mr. Weiss' deposition. 6 And then, I guess, I would also have to add, 7 as part of the conclusion, the other document that was 8 relevant was the actual transaction document that 9 occurred in the transaction.</p> <p>10 Q The closing statement?</p> <p>11 A The purchase agreement, whatever it was that -- I can't 12 remember the exact title -- the purchase agreement by 13 which LSI was purchased.</p> <p>14 Q Do you agree that a written engagement letter with a 15 client is not required under the standard of care?</p> <p>16 MR. GOULDER: Object to the form. Calls for a 17 legal conclusion.</p> <p>18 THE WITNESS: Um, I --</p> <p>19 MR. HENGEVELD: Let me rephrase that.</p> <p>20 THE WITNESS: All right.</p> <p>21 BY MR. HENGEVELD:</p> <p>22 Q Do you agree that the standard of care applicable to the 23 defendants, in this case, does not require them to have 24 a written engagement letter with their clients?</p> <p>25 A No.</p>	<p>1 A No. And I understand that to be a different question 2 than the standard of care.</p> <p>3 Q So to be clear, though, the standard of care that you're 4 applying to the defendants, in this case, is a result of 5 your practice at particular law firms throughout your 6 career?</p> <p>7 A Yes.</p> <p>8 Q Do you make a distinction between what is a best 9 practice versus what is the standard of care in 10 formulating any of your opinions in this case?</p> <p>11 A Not in this case. Obviously, there is a conceptual 12 difference between best practice and standard of care, 13 but, in this case, I don't believe I was asked about, or 14 have opined about, best practices.</p> <p>15 Q And, in this case, you believe that Jaffe, Raitt, or the 16 defendants in this case, fell below the standard of care 17 by not having a written engagement letter with their 18 clients?</p> <p>19 A Yes, I do.</p> <p>20 Q And that's based upon you having written engagement 21 letters for your clients over your career?</p> <p>22 MR. GOULDER: Object to the form. Misstates 23 his prior testimony.</p> <p>24 THE WITNESS: Yeah. It's -- it's not based on 25 what I have done, specifically, so much as it's based on</p>

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1	having had to decide -- every time we took on a new	1	Q Do you have an understanding of the ownership structure,
2	matter -- who our client was, and having had to reflect	2	or equity structure, for any of the other acquisitions
3	that accurately, and all of the conclusions that went	3	that CoBe Capital, Neal Cohen, or Darren Chaffee, have
4	into that, as well as the requirements and practices of	4	been involved with prior to the LSI acquisition?
5	the various law firms that I've worked for.	5	A The one I have looked at, specifically in connection
6	So it's -- it's -- I get that your question	6	with my report and my opinion, is the ownership
7	was whether it's just based on what I've done, and	7	structure of a company called "SSL." That's the only
8	that's -- I have to answer no, because it's based on all	8	one that I'm -- as I sit here -- familiar with enough to
9	the things I just listed.	9	describe the ownership.
10	BY MR. HENGEVELD:	10	Q In any of the documents that you have reviewed -- and
11	Q Well, do you agree that a lawyer can still reflect on	11	that's including e-mails from Mr. Chaffee and Mr. Cohen,
12	the accuracy of who his client is, without having a	12	to either Jeff Weiss, or the other lawyers at the
13	written engagement letter?	13	Jaffe, Raitt law firm -- did you ever have the
14	A Yes.	14	impression that CoBe Capital would be acquiring LSI, or
15	Q And do you agree that nothing in the Michigan Rules of	15	that CoBe Capital, itself, would be involved in the
16	Professional Conduct, or -- requires a written	16	acquisition?
17	engagement letter for this particular engagement in	17	MR. GOULDER: Object to the form. Vague.
18	which the defendants were engaged?	18	THE WITNESS: Yeah. So did I ever have the
19	A To my --	19	impression? That's a difficult question to answer.
20	MR. GOULDER: Object --	20	What I can tell you is that that is an area
21	THE WITNESS: -- knowledge --	21	where the e-mails, and the other documents, are very
22	MR. GOULDER: -- to the form. Asked and	22	unclear.
23	answered.	23	BY MR. HENGEVELD:
24	THE WITNESS: To my knowledge, I know of no	24	Q Going back to Exhibit 56, Sub -- sorry -- Section IV,
25	such requirement in the Michigan rules.	25	paragraph -- Subsection A, paragraph 2, says: Based on
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1	BY MR. HENGEVELD:	1	the documents I have reviewed, it seems clear that
2	Q Do you have an understanding of the history between	2	Messrs. Cohen and Chaffee were, as individual investors,
3	CoBe Capital and the Jaffe, Raitt law firm, prior to the	3	seeking guidance on their own behalf.
4	LSI acquisition?	4	Do you see where I read that from?
5	A Well -- so that's a pretty vague question. I'll tell	5	A I do.
6	you what my understanding is. My understanding -- based	6	Q What documents, specifically, then, are you referring to
7	on what I've seen -- is that there was prior	7	that you believe made clear that Mr. Cohen and Chaffee,
8	representation by Jaffe of -- and, I believe, the	8	as individuals, were seeking guidance from the Jaffe law
9	previous engagement letter identified CoBe.	9	firm?
10	Q Does that history -- that being the prior representation	10	A For this one, it's -- in particular, it's an e-mail,
11	of CoBe Capital by Jaffe -- have any impact on your	11	which, I believe, is from -- I'm going to say --
12	opinions in this case?	12	April 3, 2013.
13	A Yes.	13	Q I'm handing you what has been previously marked as
14	Q How so?	14	Exhibit No. 7, in this case. Is this the document that
15	A It seems clear to me that it would have been apparent,	15	you're referring to, the e-mail you're referring to?
16	from the prior representation, that the people involved	16	A Yeah. This -- this is the thread that includes that
17	with CoBe Capital, as well as the various entities,	17	e-mail.
18	formed a -- kind of a net of different investment	18	Q So where, in particular, do you believe that it makes
19	companies, which I've described in my report as being	19	clear that Cohen and Chaffee were -- as individual
20	typical of the, sort of, portfolio investor.	20	investors -- seeking guidance from Jaffe?
21	And that knowledge that Jaffe would have	21	A So this is in -- we're looking at this thread -- it's
22	had -- and that was the nature of this set of	22	the e-mail from Wednesday, April 3, 2013, at 10:43 a.m.,
23	businesses -- increases my view that Jaffe should have	23	and it's the third paragraph.
24	been on high alert for a controlled group liability, in	24	Q Can you read, for me, what you're referring to,
25	particular, a brother-sister liability.	25	specifically?

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1 A Sure. 2 One of the big issues in this deal is the 3 facility's union, and they sponsor a multiemployer 4 pension plan. The potential clawback on the withdrawal 5 liability is a risk that HNI has. 6 We also want to be sure that we aren't 7 personally liable for other assets/companies at risk. 8 We want to discuss this further. I understand the risk 9 around this pretty well, because we've been researching. 10 Q Is it your opinion, in this case, that the defendants 11 represented SSL Assets in some capacity? 12 A Yes. 13 Q In your opinion, how is it that the defendants 14 represented SSL Assets in any capacity? 15 A Because Mr. Chaffee had come forward and effectively 16 said, "We would like you to represent us, personally, as 17 well as the organizations," for which I'm speaking. 18 Q There's nothing in Exhibit 7 that lists what those 19 entities are that he's seeking representation, on behalf 20 of, or speaking, on behalf of, and, in particular, 21 nothing with regard to SSL Assets; correct? 22 A Correct. 23 Q In your opinion, how should the defendants have 24 understood that they were representing SSL Assets, or 25 any other entity?	1 But, for example, that's irrelevant if 2 Mr. Chaffee had, for example, said expressly, "I hereby 3 request my representation -- I hereby request that you 4 represent all my entities without listing them." 5 There would be no question that I represented 6 them, even though he hadn't listed them. And what I'm 7 saying is that I view this language as effectively 8 synonymous to that, particularly, given the context. 9 Q So when you have been involved in those approximately 10 100 acquisitions, did you represent not only the 11 acquiror, but also the entities that the acquiror may, 12 or may not, own? 13 A Who we represented in each of those acquisitions would 14 have been a function of who we named in our engagement 15 letter. It's very fact-specific. 16 So, to be clear -- and just getting to the 17 premise of your question -- I'm not saying that by 18 representing one company, you automatically represent 19 all the other companies. 20 I'm saying if the facts are such that the 21 person has come to you, and asked you to represent a 22 bunch of companies, then you represent a bunch of 23 companies. If they have not, then you don't. 24 Q And, in this case, is the language -- that you've 25 identified in Exhibit 7 -- the basis for you concluding
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1 A By this language. 2 Q By what language, in particular? 3 A That I just read. 4 That we want to be sure that we are not 5 personally liable, or put our other assets or companies 6 at risk. 7 So I read that as at least arguably equivalent 8 to having said, "I am coming to you to represent us, and 9 our controlled group of companies, to make sure we don't 10 have controlled group liability." 11 Q Is it your opinion that an attorney who advises about 12 potential controlled group liability represents each and 13 every entity that may be a part of that controlled 14 group? 15 A If they are asked to, yes. If they are not asked to, 16 no. You can't say without knowing what the request was. 17 Q Well, in this particular case, was it your opinion that 18 the defendants represented -- as their clients -- each 19 and every entity that may, or may not, have been part of 20 a controlled group as a result of the acquisition of 21 LSI? 22 A Yes. They represented every entity for which 23 Mr. Chaffee was speaking in this e-mail. 24 Q Do you know what entities those are? 25 A I do not. I couldn't list all of them, in any case.	1 that the defendants represented all of the entities that 2 both Mr. Chaffee and Mr. Cohen owned at the time of the 3 LSI acquisition? 4 A Yes, I am. And I'm specifically saying that Jaffe 5 certainly should have operated under that assumption, 6 given the context. 7 So again, you have language that can be read 8 as synonymous to "I'm coming to ask you to represent all 9 my companies." 10 You also just have the fact that the client is 11 particularly worried about all those companies. And in 12 my experience, under those circumstances, you have to 13 operate as though you represent all those companies, and 14 it's the burden that would be on you, if you think 15 otherwise, to limit the case by writing an engagement 16 letter of that fact. 17 Q Given your opinion, do you agree that it is the client's 18 responsibility and duty to know what businesses they 19 own? 20 A When you say "duty," that's under -- that's a vague 21 term. I don't know what would provide them with a duty. 22 But, I guess, what I'm assuming you're asking 23 is in the context of an interaction like this, is it the 24 client's responsibility to know what businesses they own?

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<p>1 And certainly the answer is yes. It is their 2 responsibility to know what businesses they own. 3 Q Do you agree that a lawyer can rely upon the client's 4 knowledge of what businesses they own -- 5 A Sure. 6 Q -- if -- 7 Can you -- do you agree that a lawyer can rely 8 upon the client to know with whom he owns those 9 businesses? 10 A Yes. But, of course, in certain contexts the word "own" 11 can have technical, specific statutory meaning, and the 12 lawyer can't rely on the client to know that. 13 Q Do you believe that the level of sophistication of a 14 client impacts the way the lawyer can communicate with 15 the client? 16 A Yes. 17 Q So the more sophisticated a client is, the lawyer can 18 communicate in more sophisticated ways? Would you agree 19 with that? 20 A I would, although I think I might add that, in this 21 case, it might produce a different result, because the 22 more sophisticated client may know that there's a 23 difference between technical equity ownership and 24 economic ownership. 25 And so you might be less likely to be able to</p>	<p>1 pension withdrawal liability? 2 A My recollection is this, that Mr. Chaffee had become 3 aware that there was such a thing, partly from a friend 4 of a colleague, and that he and/or his colleagues had 5 done some Internet-based searching around the topic. 6 Q And that friend you refer to is a lawyer; correct? 7 A I can't tell you, with certainty, but that is my 8 recollection that it was a lawyer friend who was not 9 practicing as a lawyer, but was at another private 10 equity firm. 11 Q And do you specifically recall that that lawyer was 12 involved in an acquisition involving pension withdrawal 13 liability? 14 A Only vaguely. I -- I don't remember the details. 15 Q Is what you just answered the total and extent to which 16 you have any understanding of what due diligence 17 Mr. Chaffee and Neal Cohen performed with regard to 18 controlled group liability prior to the acquisition of 19 LSI? 20 A As -- as I remember it, yes. 21 Q Are you aware that Mr. Chaffee had researched articles 22 regarding controlled group liability, or pension 23 withdrawal liability? 24 A Yes. 25 Q And are you aware that Mr. Chaffee had read the</p>
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<p>1 just rely on a simple word "ownership," and you might 2 have to be more precise for the more technically 3 sophisticated client. 4 MR. GOULDER: If you get to a point where you 5 want a break, just say the word. 6 THE WITNESS: I'm good, but if anybody else 7 here wants to take a break, that's fine. 8 BY MR. HENGEVELD: 9 Q Let's go back to Exhibit 56. I'm still under 10 Section IV, but now I'm on Subsection B, paragraph 2. 11 Do you see where I'm referring to? 12 A I do, yes. 13 Q In that paragraph, you indicate that the clients, 14 themselves, specifically highlighted the issue of 15 potential controlled group liability; correct? 16 A Correct. 17 Q Do you know what due diligence Darren Chaffee and 18 Neal Cohen performed, prior to retaining the Jaffe law 19 firm regarding the LSI acquisition? 20 A I only got the sense that I got by reviewing 21 Mr. Chaffee's deposition. 22 Q Did you review the exhibits to that deposition as well? 23 A Very briefly. 24 Q Do you know, specifically, what due diligence 25 Darren Chaffee or Neal Cohen performed with regard to</p>	<p>1 Sun Capital Partners case prior to retaining the Jaffe 2 law firm? 3 MR. GOULDER: Objection. Assumes facts not in 4 evidence. 5 THE WITNESS: Yeah, I -- I don't remember that 6 part of it, but it wouldn't surprise me. 7 BY MR. HENGEVELD: 8 Q Are you aware that Mr. Chaffee had researched 9 articles -- for example, an article from 10 Skadden, Arps -- regarding the Sun Capital Partners 11 case? 12 A I -- again, I didn't remember that it specifically 13 related to Sun Capital, but I did remember -- I did 14 remember Skadden was one of them that he found articles 15 online. 16 Q In your opinion, is Mr. Chaffee a sophisticated client? 17 MR. GOULDER: Object to the form. Vague. 18 Beyond the scope. That's his opinion. 19 THE WITNESS: Yeah. So I have to say the word 20 "sophisticated" is an extremely -- not just vague, but 21 also a relative term, so I have to say sophisticated 22 with respect to what? 23 If the question is, was he sophisticated in 24 connection with financial transactions, relative to an 25 average person on the street, then that answer is yes.</p>

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1 BY MR. HENGEVELD:	1 Do you see that?
2 Q What about with regard to sophistication regarding	2 A Yes, I do.
3 issues of pension withdrawal liability and controlled	3 Q The attribution concept actually derives from the
4 group liability?	4 tax code; correct?
5 A Absolutely not. He was aware that the issue existed,	5 A Correct. Well, I guess I have to clarify that.
6 but in terms of sophisticated understanding of the	6 Ultimately, the attribution, in question, is a function
7 issue, absolutely not.	7 of ERISA, but it defines it by cross-reference to the
8 Q Do you believe that a nonlawyer client can understand	8 tax code. So the definition stems from tax definitions.
9 the issues regarding controlled group liability when	9 Q Right. The concept of attribution is formed via the
10 they're acquiring a business that has, or sponsors, a	10 tax code, and is applied, in this particular case, under
11 multiemployer pension plan?	11 the ERISA law --
12 A So the question is:	12 A So that --
13 Is it possible for a client to understand	13 Q -- statutes?
14 those issues?	14 A -- phrasing doesn't compute for me. The concept being
15 Q Yes.	15 formed and applied in this case.
16 A Yes.	16 The way -- the way I phrase it is, ERISA
17 Q Are the opinions that you provide, in this case, taking	17 imposes attributed ownership, and defines it by
18 into account the level of sophistication by Mr. Chaffee	18 cross-reference.
19 and Mr. Cohen as it relates to controlled group	19 Q Going back to Exhibit 56, page 8, paragraph number 9.
20 liability?	20 In there you state that:
21 A Yes.	21 Because of these detailed, intricate ownership
22 Q Again, you deem -- you deem both of them -- that is	22 tests, the most common approach to gaining a confident
23 Chaffee and Cohen -- to be completely unsophisticated	23 understanding of the extent of controlled group status
24 regarding controlled group liability issues?	24 is to obtain or create, with the client's input, an
25 A Well, I'm not sure I'd use the word -- so	25 organizational chart.
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1 "sophisticated," again, is such a vague and relative	1 Do you see that?
2 term. They're sophisticated relative to people who have	2 A I do.
3 never heard of the issue, but if we ask ourselves, "Are	3 Q Does the standard of care require that an organizational
4 you sophisticated on this issue? Do you have a	4 chart be obtained, or created, when rendering advice
5 sophisticated understanding of this issue?" then	5 about whether there's controlled group liability?
6 absolutely not, they are not sophisticated.	6 A So if the question is:
7 And, I guess, I would be willing to say, in	7 Can the standard of care be met without an
8 your words, "completely unsophisticated," except to the	8 organizational chart?
9 extent they're aware that the issue exists. That's more	9 The theoretical answer is no.
10 sophisticated than the average person.	10 What the standard of care requires is that you
11 Q Well, do you know whether Mr. Chaffee, or Mr. Cohen, was	11 develop a complete understanding of the organization,
12 aware of the brother-sister test, or parent-subsidiary	12 and if it's possible for you to do that, simply by means
13 test, regarding controlled group liability prior to	13 of words -- A company owns B company, which is
14 retaining Jaffe?	14 30 percent owned by C company, et cetera -- that
15 A So I don't know whether they'd heard of it. They might	15 theoretically can suffice.
16 have heard of it.	16 But, in my experience, the way the human brain
17 Q Going back to Exhibit 56, turning your attention to	17 works, the only way to get the actual understanding
18 page 8, and the paragraph number 8 at the top of page 8.	18 necessary to perform the standard of care for a
19 Do you see that?	19 complicated organization is through a chart.
20 A Yes, I do.	20 But, nonetheless, if your brain worked the
21 Q You say:	21 right way, theoretically you could acquire the
22 Crucially, in applying either the	22 information without a chart.
23 parent-subsidiary, or the brother-sister test, ownership	23 Q Okay. So then, to be clear -- I want to make sure that
24 must be "attributed" from certain entities and persons	24 your prior answer was accurate -- theoretically, you are
25 to others.	25 able to comply with the standard of care without an

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1 organizational chart; correct?	1 Jaffe, only Darren and Neal could have provided an
2 A Correct. I've never met anyone, I think, that could do	2 organizational chart.
3 that, but correct, theoretically.	3 Q Thank you.
4 Q Well, if you had a client that did not have any common	4 A Sure.
5 ownership with another individual or a company, that was	5 Q With regard to your opinion in Exhibit 56, page 8,
6 part of the acquisition of an entity with a	6 Subsection D, where it states:
7 multiemployer pension plan, then you could -- without	7 Once it arises, controlled group liability,
8 having an organizational chart -- conclude that there is	8 under Title IV of ERISA, cannot be escaped through
9 no brother-sister tests -- or, sorry -- there's no	9 corporate divestiture or reorganization.
10 brother-sister relationship for controlled group	10 A Um-hmm.
11 liability; correct?	11 Q Do you -- first of all, do you see that?
12 MR. GOULDER: Objection. Vague and assumes	12 A Yes, I do.
13 facts not in evidence.	13 Q A pension withdrawal liability has not been assessed
14 THE WITNESS: So the one point I'll note with	14 against LSI, or LSI Holdings of America, LLC, or
15 your question and answer, is that there is a vague term	15 SSL Assets; correct?
16 used in the preface to your question, which is the term	16 A I don't know.
17 "common ownership."	17 Q Well, only the trustees of the Pension Fund can assess
18 If you unpack that term to say	18 pension withdrawal liability; correct?
19 common ownership under all the relevant regs and	19 A That's my understanding.
20 statutes, then the answer to your question is yes.	20 Q And you've not seen any evidence, in this case, that the
21 BY MR. HENGEVELD:	21 trustees of the Pension Fund have assessed
22 Q Have you seen an ownership chart of Darren Chaffee's	22 pension withdrawal liability; correct?
23 ownership interests in any entities that he owns?	23 A I don't believe I have, no.
24 A So I have seen various charts. I don't know -- I may,	24 Q Do you agree that the evading and avoiding section of
25 or may not, have seen a chart that purported to be a	25 ERISA does not prevent a business from changing its
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1 complete chart of Darren's ownerships.	1 ownership structure, so long as there are -- are
2 The one I had focused on is just an ownership	2 good-faith nonwithdrawal liability reasons for making
3 chart of SSL.	3 the changes?
4 Q Is it the attorney's duty to create an organizational	4 A I absolutely do not agree with that statement. The way
5 chart for the client?	5 you phrased that statement is, so long as there are
6 A Of course not. The attorney's duty is to acquire a full	6 other reasons. It restates the question as though it's
7 understanding of the network of ownership interests.	7 a test of whether it's a sham that states the tax sham
8 Q Do you agree that only the client can provide the	8 transaction question.
9 ownership interests for the attorney to assess?	9 The test, in this case, is whether any
10 A Well, that depends on the facts. I suppose, in some	10 reason -- any of the reasons -- includes escaping
11 cases, it might be public. But in -- in this case, I	11 liability. So the mere fact that you can identify one
12 have no reason to believe Jaffe could have produced the	12 or more other reasons does not allow you to do this
13 organizational chart without having asked the	13 transaction. So I completely disagree with the way you
14 information necessary to produce it, so no.	14 stated it.
15 Q That is, so, yes, you agree that --	15 Q Well, just because there is the evading and avoiding
16 A In this case --	16 section of ERISA, that doesn't prevent a business from
17 Q -- only Darren Chaffee or Neal Cohen could have provided	17 changing its ownership structure if the reason for
18 the ownership interests, or their -- any of --	18 changing it isn't to avoid pension withdrawal liability;
19 interest -- or entities that they had an interest in?	19 correct?
20 A Yeah. So I'm just trying to make the question more	20 A Correct. If it's a complete, unanticipated side effect,
21 precise, so I can answer it.	21 then it doesn't prevent it, and that's a question of
22 I think your original question was "only the	22 fact.
23 client" can do that, and I -- so precisely rephrasing	23 Q And the fund has the burden to prove that the change in
24 the question, and answering it:	24 ownership was intended to evade or avoid
25 In this case, between Darren and Neal and	25 pension withdrawal liability; correct?

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1 A I don't remember the burden of proof. I don't know.	1 the pension withdrawal liability amount?
2 Q Would you agree with me that businesses change their	2 A I don't know. I have no experience with that.
3 ownership structure all the time for various reasons	3 Q Are there any other factors that the trustees of the
4 that are not related to pension withdrawal liability?	4 fund take into consideration in negotiating down the
5 A Yes, I would.	5 amount of pension withdrawal liability?
6 Q Once pension withdrawal liability is assessed -- that	6 A So --
7 is, by the fund -- can the sponsors of the plan	7 MR. GOULDER: Object to form and foundation.
8 negotiate to reduce the amount of that pension	8 THE WITNESS: I just don't know.
9 withdrawal liability?	9 BY MR. HENGEVELD:
10 A My understanding is yes.	10 Q Do you have any opinions, in this case, about whether
11 Q Have you ever been involved in such a negotiation?	11 SSL Assets has a duty, or responsibility, to attempt to
12 A I have not.	12 mitigate any alleged pension withdrawal liability that
13 Q Have you ever had a client that has been assessed	13 might be assessed?
14 pension withdrawal liability?	14 A I don't know.
15 A I have not. Oh, no, I'm sorry. I have. I have had a	15 Q Do you agree that Darren Chaffee and Neal Cohen are not
16 client that's been assessed pension withdrawal	16 subject to pension withdrawal liability as a result of
17 liability.	17 the LSI acquisition?
18 Q And have you, in that situation, been asked to attempt	18 A I can't --
19 to reduce the pension withdrawal liability?	19 MR. GOULDER: Objection. Calls for a legal
20 A I have.	20 conclusion.
21 Q And what steps did you take to attempt to reduce that	21 THE WITNESS: Yeah, I can't -- I just don't
22 pension withdrawal liability?	22 know. I'd have to analyze it. That's not something
23 A I negotiated with the trustees.	23 I've analyzed.
24 Q And were you able to reduce the amount of pension	24 BY MR. HENGEVELD:
25 withdrawal liability in that case?	25 Q Have you been asked to analyze whether this particular
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1 A Yes, I was.	1 multiemployer pension plan could be deemed to be a
2 Q By what percentage were you able to reduce the	2 construction industry plan?
3 pension withdrawal liability?	3 A I have -- the -- the -- the question has been raised
4 A That, I just don't remember. It was probably on the	4 with me by Stinson, and I have briefly looked at it.
5 order of 10 percent.	5 Q And when was that raised --
6 Q How was it that you were able to negotiate down that	6 A It was --
7 amount of pension withdrawal liability?	7 Q -- first raised with you?
8 A I'm not quite sure what you're asking.	8 A It was first raised after my report. I'd say maybe late
9 Q What arguments did you make, on behalf of your client,	9 December, or early January. I don't remember exactly
10 to reduce the amount of --	10 when.
11 A So --	11 Q And what were you specifically asked to do regarding
12 Q -- pension withdrawal liability?	12 whether this is a construction industry plan?
13 A So this is one client -- and this is probably six years	13 A I was asked for a quick view as to whether I thought
14 ago, so I'm -- and I'm just bringing it to mind, and I'm	14 that that exception might apply.
15 having trouble remembering exactly what our argument	15 Q Did you form a conclusion as to whether that exception
16 was.	16 might apply?
17 Oh, I think it actually had to do with the	17 A I formed a preliminary conclusion that it does not
18 limitations period. I think we argued that they had	18 apply.
19 possibly missed the period for assessing the liability.	19 Q And what is that conclusion based upon?
20 Q And what is the statute of limitations period with	20 A So my understanding is that the construction industry
21 regard to the fund assessing pension withdrawal	21 exception is defined by reference to caselaw under labor
22 liability?	22 law, and I believe it's the LMRA, but I'm not certain of
23 A I'm sorry. I don't remember.	23 that recollection.
24 Q Do you know whether the trustees of the fund take an	24 But my understanding is that the caselaw --
25 ability to pay into consideration when negotiating down	25 the definition of construction industry is relevant for

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1 those purposes under labor law, and has been the subject 2 of cases defining what is a construction industry 3 company, and that the test is something along the lines 4 of the company's work being predominantly done on the 5 construction job site. 6 So in the case of new building construction 7 the new work is predominantly done on the job site. And 8 so my preliminary understanding of both the rule and the 9 facts here, is that testimony applied here, because too 10 much of this company's work was not done at the 11 construction site.	1 about indirect ownership of interests held by 2 Messrs. Cohen and Chaffee would have had to be elicited 3 from these individuals by Jaffe, Raftt, in order 4 correctly to characterize the risk of triggering 5 potential controlled group liability on the part of SSL 6 as a result of the acquisition. 7 Do you see that?	
12 Q And what do you base that conclusion on in terms of the 13 facts?	8 A Yes.	
14 A My understanding, my very brief understanding, that I 15 could draw from the documents that this -- and I think 16 that Stinson has told me -- that this company 17 manufactures shelving and cabinetry, and does some 18 installation, but my understanding is not enough to meet 19 the test under this caselaw.	9 Q Do you agree with me that that information about the 10 indirect ownership interests, owned by Cohen and Jaffe, 11 could be elicited orally?	
20 Q What would be the impact if this were to be deemed a 21 construction industry plan?	12 A Yes.	
22 A Then the -- my understanding -- and this is not an area 23 that I've spent a lot of time in -- is that the 24 withdrawal liability would not apply.	13 Q When you say "indirect ownership interests," what are 14 you referring to, in particular?	
25 Q Going back to Exhibit No. 56 --	15 A Any indirect ownership would have to be elicited. In 16 this case, what turned out to be -- what turned out to 17 exist, and be relevant, was indirect ownership through 18 intervening companies. 19 Other types of indirect ownership that would 20 have to be asked about, as well, turned out not to be 21 relevant here.	
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1 A Yeah.	25 Q Let me ask you about both. What are you specifically 1 referring to with regard to the -- what you deemed as to 2 be "intervening companies"?	
2 Q -- page number 10, paragraph number 4 on that page, 3 starts with "Analysis of the ownership structure."	25 A So, for example, in the case of SSL, neither	
4 Do you see that?	Page 60	
5 A I do.	1 1 A Mr. Chaffee, nor Mr. Cohen, owned an interest in SSL.	
6 Q Do you know what documents existed at the time that 7 Jaffe rendered its advice on controlled group liability 8 that you believe Jaffe should have had before rendering 9 that advice?	2 2 Mr. Chaffee and Mr. Cohen each owned interests in other 3 entities, which owned interests in SSL. 4 4 That is indirect ownership, and so you would 5 need to elicit information about indirect ownership in 6 order to be able to make this analysis.	
10 A Do I know what documents exist that Jaffe should have 11 had? Um --	7 7 Q In your prior answer you mentioned indirect ownership 8 that you said turned out not to be relevant. What are 9 you referring to in that --	
12 Q And -- sorry -- specifically with regard to Exhibit -- 13 sorry -- paragraph number 4 on page 10, and that is your 14 reference to the analysis of the ownership structure?	10 10 A So --	
15 A Um-hmm.	11 11 Q -- answer?	
16 Q I guess my more precise question is:	12 12 A So, for example, the attribution rules are fairly broad, 13 and if, for example, a family member owns stock in a 14 company, that may have to be attributed to you, if we're 15 asking about you. 16 16 So the question, sort of, goes to how precise 17 one has to be when one asks about ownership, because of 18 the potential for indirect ownership from many different 19 sources, only one of which turned out to be relevant 20 here.	
17 What, specifically, are you referring to of 18 the analysis of ownership structure?	21 21 But had the precise question been asked, it 22 would have elicited that, as well as all the other 23 possible relevant forms of ownership.	
19 A So I'm referring to the facts of the ownership 20 structure, what they owned. I'm not actually referring 21 to a document. I don't know what documents existed. 22 I'm referring to the facts, as they existed, 23 and analysis of those facts should have led to that 24 conclusion.	24 24 Q And are you referring to something specifically with 25 regard to Neal Cohen or Darren Chaffee's interests, or	
25 Q Exhibit 56, page 10, paragraph 6 on that page: Information		

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1 their spouses' interests, in this case?	1 ask Mr. Chaffee, for example, "Do you own any SSL	
2 A No. No. I'm -- here's what I'm saying -- I'm saying	2 equity?" under one of the meanings of "common ownership"	
3 that when you're trying to analyze, or when you're	3 the answer is, no, Mr. Chaffee does not own any stock in	
4 asking someone -- well, strike that.	4 SSL.	
5 When you're trying to answer for someone,	5 So, as a result, the question is sufficiently	
6 whether they are part of a controlled group, because of	6 vague in the sense that it can be interpreted reasonably	
7 the way the attribution rules work, you have to ask a	7 in a way that would allow a negative answer, without	
8 number of very precise questions, because it can turn	8 having eliminated the possibility that -- that the	
9 out that stock that you wouldn't have thought about,	9 regulation's attribution rules have been met, that one	
10 might be taken into account, for example, your family	10 would have to follow up.	
11 members, so you have to ask all these precise questions.	11 There's no way to decide, on the basis of that	
12 In response to your question, in this case it	12 question, on whether you have a controlled group or not,	
13 turned out that none of that was relevant, except for	13 without having stated, precisely, what one means by the	
14 the indirect part. But the standard -- the standard of	14 vague term "common ownership."	
15 care is that you have to ask all of those, because you	15 Q Well, do you agree with me that as an ERISA lawyer, if	
16 don't know, in advance, that those are not going to turn	16 you're told that there is no common ownership between	
17 out to be relevant.	17 two clients that are acquiring an entity with a	
18 Q Turning your attention to paragraph -- Exhibit 56,	18 multiemployer pension plan, you would not need to do any	
19 page 11, paragraph 1 on that page, what documents and	19 further analysis with regard to whether there was	
20 testimony are you referring to, specifically, when	20 controlled group liability?	
21 you're talking about the question asked by Jaffe, Raitt,	21 A So two -- two things. So, first, you again just used	
22 and that Mr. Cohen answered in the negative?	22 the word "common ownership." So everything I said in my	
23 A I believe this is all from Mr. Weiss' deposition, but I	23 previous answer, it's too vague. But you prefaced it by	
24 think it's also something, to this effect, in some of	24 saying "as an ERISA lawyer."	
25 the other Jaffe lawyers' depositions.	25 So if, by that, you meant if someone said to	
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1 Q So you're not necessarily referring to the document,	1 me, "Assume that for purposes of ERISA, there is no	
2 you're just referring to the testimony by Mr. Weiss, or	2 common ownership," then the answer is yes.	
3 by the other Jaffe attorneys?	3 But if they just say "common ownership" --	
4 A Yeah. I guess in the same documents. I guess I had the	4 whether I'm an ERISA lawyer, or anyone else -- the	
5 depositions in paper form, so...	5 answer is no. I would require more analysis.	
6 Q Okay. And is it actually a question that Mr. Cohen	6 Q Have you formed any specific opinions with regard to	
7 answered, or is it a question that Mr. Chaffee answered?	7 Deb Baughman's services in this case?	
8 A Oh, you're right. This is probably a mistake in my	8 A No.	
9 report, because I think that Mr. Weiss' deposition is	9 Q Are your opinions and criticisms, in this case, limited	
10 about a conversation with Mr. Chaffee, and not	10 then to how Mr. Weiss obtained the information as to	
11 Mr. Cohen.	11 what ownership interests Darren Chaffee and Neal Cohen	
12 Q Do you agree with me that if there is, indeed, no common	12 had?	
13 ownership of entities between Mr. Chaffee and Mr. Cohen,	13 A Here's --	
14 that, then, there is no further analysis that needs to	14 MR. GOULDER: Object to the form.	
15 be done regarding controlled group liability for	15 Go ahead.	
16 brother-sister tests?	16 THE WITNESS: Here's how I've analyzed it.	
17 A I can't agree with that for the reason that the term	17 I've looked at all of the communications from the firm	
18 "common ownership" is too vague and susceptible with	18 to the client, without regard to who was making the	
19 different meanings, one of which would allow -- at least	19 communication, almost as though it were one person.	
20 one of which would allow the answer to be positive, and	20 So I'm not making any distinctions about any	
21 the others which -- others of which would allow it to be	21 individual lawyer at Jaffe. I'm saying that if you take	
22 negative.	22 Jaffe as the lawyer here, and assume that these	
23 Q Well, how so would it be negative?	23 questions were asked as stated, and answered as stated,	
24 A So ownership can have a number of different meanings,	24 that the conclusions I've drawn are what I've drawn.	
25 and one of the possible meanings of ownership -- if I	25 MR. HENGEVELD: Let's take a quick break.	

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1 (Whereupon a break was taken 2 from 9:46 a.m. to 9:55 a.m.)	1 Q -- of care? 2 A It's too vague. 3 Q The word "own" is vague, in your opinion? 4 A It is. 5 And again, I think especially, in this case, 6 where you have someone who has not necessarily ERISA 7 sophistication, but some business and transactional 8 sophistication, and has focused, in the past, for 9 example, on the fact that there are intervening 10 entities, and it's been important to him -- for whatever 11 reason -- in the past, that there is an intervening 12 entity, such that he is able to answer the question, 13 "Do you own X?" in the negative, even though he owns an 14 intervening entity that owns X.
3 BY MR. HENGEVELD: 4 Q Going back to Exhibit No. 56, page 11, 5 paragraph number 3 on that page. Do you see that 6 paragraph? 7 A Yes, I do. 8 Q In the last sentence of paragraph 3, you state: 9 That, however, raises the question of whether 10 it met the standard of practice in such a context simply 11 to have asked, of a client, "Do you have any common 12 ownership of another entity?" 13 Do you see that? 14 A Yes, I do. 15 Q If a client is familiar with the attribution rules, and 16 their understanding of their ownership interests, and 17 all the entities in which they have an interest, do you 18 agree that a lawyer asking whether -- or asking the 19 client to list all the entities in which he has an 20 ownership interest in common with another acquiror, 21 meets the standard of care?	15 It's again -- when you ask a question -- as a 16 lawyer, in this context, when you ask a question that's 17 capable of a truthful affirmative answer, that if 18 understood a certain way will not have given you the 19 information you need, then you have not met the standard 20 of care in helping that client figure out whether 21 they've got a controlled group. 22 Q In your opinion, what question should have been asked, 23 by the Jaffe attorneys, in evaluating the potential for 24 controlled group liability in this case? 25 A Right. There's effectively two ways to have done it,
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1 attribution rules, and the lawyer knows that the client 2 understands the attribution rules, then to -- to get a 3 response saying, "Do you have any common ownership of 4 another entity?" where the lawyer knows that the client 5 is understanding that, in the context of those 6 attribution rules, that would meet the standard of care. 7 Q What about a lawyer asking a simple question, "What 8 businesses do you own in common with the other 9 acquiror?" 10 Does that meet the standard of practice for 11 determining whether there is a basis upon which to 12 conclude that there might be potential controlled group 13 liability? 14 A No. The words "in common" are fatally vague. They 15 permit an answer that would say, no, it does not provide 16 the lawyer the information they need. 17 Q What about the question, "Do you own any businesses with 18 the other acquiror?" 19 A Again -- 20 Q Does that -- 21 A -- that's -- 22 Q -- meet the -- 23 A -- too -- 24 Q -- standard -- 25 A -- vague.	1 and probably both are -- are the best way to do it. 2 One is to effectively summarize or recite the 3 attribution rules, and say, taking into account any 4 direct or indirect ownership, as well as any other 5 attributed ownership, and here are the lists of 6 attributed ownership -- for example, family members -- 7 does it turn out that if you drew the ownership lines, 8 you would have an indirect, or direct, or attributed 9 ownership interest in a company in which Mr. Cohen also 10 had a direct or indirect or attributed ownership? 11 The other way to do it, which is conceptually 12 equivalent -- and again, I think, works better, given 13 the human brain -- is to ask for an organizational chart 14 that shows boxes for all the entities with lines showing 15 ownership interest. 16 But even there, you would have to note that 17 the organizational chart would have to be supplemented 18 to show any of these attributed ownership rules that I 19 mentioned. 20 Q And you agree that that question could be asked orally? 21 A Yes. 22 Q You indicated, in your answer, that that's the best way 23 to do it. Do you believe that that's what the standard 24 of practice requires? 25 A What I -- what I said, in my answer, was the best way

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1 would have been to do it both ways. The standard of 2 practice would require that you do it at least one of 3 the other way. 4 Q And what, specifically, are you referring to that 5 formulates your opinion that that is what the standard 6 of practice is? 7 A Because there's no other way to analyze control groups 8 properly and correctly. There's no other way to analyze 9 control group existence, correctly, other than with all 10 of the facts that are required to be taken into account 11 by the tests. There's no other way to get the necessary 12 information. 13 Q Are you basing your opinion regarding the standard of 14 practice, then, on your particular experience in 15 practicing law -- 16 A Well -- 17 Q -- or are you basing it on a statute, Model Rules of 18 Professional Conduct, Michigan Rules of Professional 19 Conduct, caselaw, or some other source? 20 A I'm basing this answer, I guess, in response to this 21 question, on two things. 22 One, the logical requisite that you can't 23 answer the question of whether it's a controlled group, 24 without having gotten all this information. So just 25 sheer logic, you have to have acquired certain	1 previous page 11 -- the last sentence in paragraph 5 2 says: 3 Under such circumstances a very thorough, 4 direct set of questions and requests for detailed 5 ownership information was called for. 6 Do you see that? 7 A Yes, I do. 8 Q The direct set of questions and requests do not have to 9 be in writing; correct? 10 A Correct. 11 Q Exhibit 56, page 12, paragraph 7 on that page, you state 12 that the attorney has to explain the existence and 13 summarize the general outlines of the ownership 14 attribution rules under the regulations; correct? 15 A Yes. 16 Q Is that true even in the circumstances that the client 17 knows of the attribution rules? 18 A Not if -- you stated the question if the client knows of 19 the attribution rules. That doesn't help at all. 20 The client would need to know, exhaustively, 21 the content of the attribution rules, and you would have 22 to know that. If you, the lawyer, know that the client 23 has an exhaustive understanding of the content of the 24 attribution rules, then, as we've said -- I think I've 25 already said -- then I wouldn't say that the standard of
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1 quantitative information to be able to answer this 2 question under the statute. 3 I am also -- although, I think that would be 4 the same answer, even if this was the first time I'd 5 ever seen this question, you'd just look at the question 6 and you'd say, "What do I need to answer it?" 7 But it's also based on all of the transactions 8 I've been involved in, and all the private equity 9 clients I've ever advised, all the investment companies 10 I've ever advised, knowing that they tend to have these 11 complicated networks, companies with ownership going in 12 different directions, that you have to be particularly 13 inclusive. 14 So it's all of those things, but, ultimately, 15 it's just a logical answer. You can't -- you cannot 16 answer this statutory question without having elicited 17 all of this information. 18 Q If the information elicited about ownership -- either 19 direct or indirect -- reflects that there is no direct 20 or indirect common ownership between the two acquirors, 21 would you agree with me that that would end the inquiry 22 regarding controlled group liability? 23 A Yes, I would. 24 Q Exhibit 56, page 12, the last sentence of paragraph 5 -- 25 which was a continuation of the paragraph from the	1 care requires that you repeat those to the client. But 2 knowing of them, doesn't help at all. 3 Q In your opinion, would most certified public accountants 4 know the attribution rules? 5 MR. GOULDER: Object to form and foundation. 6 THE WITNESS: And I'll answer that, in my 7 opinion, it would be an extremely rare CPA who would 8 know the attribution rules that apply for purposes of 9 ERISA liability. 10 BY MR. HENGEVELD: 11 Q Well, those attribution rules we've already covered, 12 though, arise out of the tax code; correct? 13 A So if you told a CPA you had to work on corporate tax 14 returns and controlled group returns, and you knew that 15 the CPA had to work on controlled group returns, and you 16 told the CPA, "For purposes of this ERISA-controlled 17 group analysis, we have to apply all of the same 18 controlled group rules that you've had to apply for 19 purposes of the controlled group returns you've worked 20 on," then I think you could probably be safe. 21 Q Let's be more simplistic on that. You would expect a 22 CPA to understand the concept of pass-through entities; 23 correct? 24 A Pass-through entities has absolutely no relevance here. 25 So the attribution rules would apply whether we were

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<p>1 talking about an LLC, or a C Corp., or a partnership.</p> <p>2 And, moreover, as I've said before, it turned</p> <p>3 out not to matter here, but, actually, to have asked the</p> <p>4 question, you would have needed to apply all the other</p> <p>5 attribution rules, which are specific to these</p> <p>6 attribution rules, like family members, and so forth.</p> <p>7 So the pass-through rules apply not for</p> <p>8 purposes of defining a control group, even under the</p> <p>9 tax code. The pass-through rules apply for purposes of</p> <p>10 making the owner essentially reflect all of the</p> <p>11 tax income and expenses of the entity, itself.</p> <p>12 It has nothing to do, even on the tax side,</p> <p>13 with defining controlled group.</p> <p>14 Q The concept is similar -- the concept -- strike that.</p> <p>15 The concept of a pass-through entity is the</p> <p>16 concept of attribution?</p> <p>17 A For one particular context. For other particular</p> <p>18 contexts it is an actual, effective legal barrier.</p> <p>19 And my recollection of the depositions here is</p> <p>20 that Mr. Chaffee, at least, was aware -- I'm not sure he</p> <p>21 was aware of the reasons -- but he was aware that there</p> <p>22 was an intermediate entity that had substance, and that</p> <p>23 that existence of the substantive intermediate entity</p> <p>24 had importance, completely, without regard to the</p> <p>25 pass-through of tax attributes.</p>	<p>1 definitively, but I don't remember ever creating an</p> <p>2 organizational chart for Neal.</p> <p>3 Q Exhibit 56, page 12, paragraph 8, talks about subtleties</p> <p>4 implicit in the question about, "Do you have any other</p> <p>5 common ownership?"</p> <p>6 Do you see that?</p> <p>7 A Yes, I do.</p> <p>8 Q What specific subtleties are you referring to implicit</p> <p>9 in that question?</p> <p>10 A Most of what we've been talking about, and particularly</p> <p>11 the attribution rules, and the indirect ownership</p> <p>12 rules -- well, strike the "and the indirect ownership</p> <p>13 rules."</p> <p>14 It all really falls under the attribution</p> <p>15 rules.</p> <p>16 Q Again, nothing beyond what we've --</p> <p>17 A Right.</p> <p>18 Q -- what you've already testified to --</p> <p>19 A Right.</p> <p>20 Q -- regarding the --</p> <p>21 A Right.</p> <p>22 Q -- attribution rules?</p> <p>23 A Right.</p> <p>24 Q On page 13 of your report, paragraph 2, it talks about</p> <p>25 there being amendments or additions to the report that</p>
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<p>1 Q Going back to Exhibit 56, paragraph 6, on page 12, in</p> <p>2 there you state that Jaffe, Raitt should have asked</p> <p>3 specific follow-up questions necessary to confirm the</p> <p>4 existence of common ownership. Do you see that?</p> <p>5 A Paragraph 6? Oh, yes, I see it.</p> <p>6 MR. GOULDER: Paragraph six.</p> <p>7 THE WITNESS: I see it, yes. I'm sorry.</p> <p>8 MR. HENGEVELD: That's okay.</p> <p>9 BY MR. HENGEVELD:</p> <p>10 Q What specific follow-up questions do you believe</p> <p>11 Jaffe, Raitt should have asked that the lawyers in that</p> <p>12 firm did not ask?</p> <p>13 A Here's the main one:</p> <p>14 Here are the attribution rules. I'll list</p> <p>15 them, taking these into account you have common</p> <p>16 ownership.</p> <p>17 Q Do you agree that the advice that Jaffe, Raitt rendered</p> <p>18 to Darren Chaffee and Neal Cohen was based upon the</p> <p>19 information that they -- Darren Chaffee and</p> <p>20 Neal Cohen -- gave to the Jaffe attorneys?</p> <p>21 A I have to answer that question, yes.</p> <p>22 Q Have you ever created an organizational chart for a</p> <p>23 client with regard to the acquisition of an -- of an</p> <p>24 entity?</p> <p>25 A Well, it's been a long time, so it's hard to say,</p>	<p>1 you may develop if there's new evidence, et cetera.</p> <p>2 Are all of the opinions, to which you</p> <p>3 testified about today, the sum total and entirety of the</p> <p>4 opinions that you have formulated in this case?</p> <p>5 MR. GOULDER: Object to the form of the</p> <p>6 question. His opinions are set forth in the report --</p> <p>7 THE WITNESS: Um --</p> <p>8 MR. GOULDER: -- and his testimony today.</p> <p>9 THE WITNESS: You know, I'll try to answer it,</p> <p>10 but it's a really hard question, because you're asking</p> <p>11 me all the opinions I might have -- like I've formed a</p> <p>12 number of opinions about this room since I've been here.</p> <p>13 I mean, you know, I --</p> <p>14 MR. HENGEVELD: Let me rephrase the question.</p> <p>15 BY MR. HENGEVELD:</p> <p>16 Q Are there any other opinions that you have that relate</p> <p>17 to this case, other than those set forth in Exhibit 56,</p> <p>18 which is your report, or that you have testified about</p> <p>19 today?</p> <p>20 A None that are relevant to the scope of my engagement,</p> <p>21 but it's such -- I'm sorry -- it's just such an</p> <p>22 incredibly broad question, "Have I formed any opinions?"</p> <p>23 It's, like, opinions, like, there's lots of</p> <p>24 people doing transactional work. I mean, there's just</p> <p>25 so many opinions. You asked how many opinions have I</p>

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1 formed about the case. 2 It's interesting that this investment bank 3 exists in New York, and does business. There's lots of 4 opinions I formed. If the -- but if the question is: 5 Have I -- is this the sum total of the 6 opinions I have formed about whether this law firm met 7 the standard of care, the answer is yes. 8 MR. HENGEVELD: Thank you. 9 Give me a moment -- 10 THE WITNESS: Okay. 11 MR. HENGEVELD -- to look over my notes. 12 THE WITNESS: Sure. 13 (Momentarily off the record.) 14 BY MR. HENGEVELD: 15 Q Did you research any caselaw, or secondary sources, in 16 order to prepare your report, or provide your opinions 17 in this case? 18 A Caselaw, or secondary sources, yes. 19 Q What issues or topics -- 20 A I think -- 21 Q -- did you research caselaw, or secondary sources, in 22 order to prepare your report? 23 A I think I cited them in here. So I cited -- just 24 flipping through my report -- I cited some secondary 25 sources on page 5, under B(1), and I cited a case on	1 relevant or critical to your opinions? 2 A I guess I list the most important as being the early 3 e-mail, in April of 2013, but also Mr. Weiss' entire 4 deposition, and Mr. Chaffee's entire deposition. Those 5 three things are more important, probably, than anything 6 else, for my conclusions. 7 Q And, for the record, that e-mail was the Exhibit 7 that 8 we looked at -- 9 A Yes. 10 Q -- today? 11 A Yeah. 12 Q You indicated that you reviewed the report of 13 Jordan Schreier? 14 A Yes. 15 Q Do you have any disagreements with the content of what 16 is in his report? 17 MR. GOULDER: Object to the form. Overly 18 broad. 19 THE WITNESS: Yes, I do. 20 BY MR. HENGEVELD: 21 Q As you sit here today, is there anything specific that 22 stands out as being objectionable in his report? 23 MR. GOULDER: And the record should show that 24 the report is not in front of the witness. If you want 25 a detailed answer, I think that would be the fair thing
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1 page 8, under Section D(2), and then on page 9, under 2 E(1), I cited some secondary sources. 3 MR. GOULDER: Have you finished your answer? 4 THE WITNESS: Yes. 5 MR. GOULDER: 'Cause I was just going to say, 6 for completeness, you had mentioned some follow-up 7 analysis on the construction exemption. 8 THE WITNESS: Well, what we talked about, 9 earlier, sure. In response to your question, earlier, I 10 looked up, briefly, some of the caselaw that exists on 11 the construction industry exemption. 12 And, I guess, I can't rule out -- I mean, if 13 you're asking me what I've even looked at in the course 14 of -- I mean, I found these things that I cited, and I 15 don't -- I may have looked at some things, in the course 16 of finding these things, that I didn't cite that I just 17 don't remember, but these are the topics that I was 18 trying to support. 19 BY MR. HENGEVELD: 20 Q And the documents that you have reviewed in preparation 21 for providing your opinions, in this case, do you 22 consider any particular document, or documents, more 23 critical and relevant to the opinions than others? 24 A Yes. 25 Q What documents are those that you consider to be more	1 to do. 2 (Marked for identification: 3 Deposition Exhibit No. 57.) 4 BY MR. HENGEVELD: 5 Q I'm handing you what's been marked as Exhibit 57, which 6 is the report of Jordan Schreier. 7 Can you answer the question now -- 8 A Thank you. 9 Q -- with that report? 10 A Sure. So I will -- so I disagree with the conclusion at 11 the top of page 8, that Jaffe, Raitt's standard 12 satisfied the standard of care, et cetera. 13 I guess I'll just highlight the conclusions 14 that I disagree with, rather than every specific 15 subsection. I disagree with the conclusion on page 10, 16 that Jaffe, Raitt did not represent SSL Assets. 17 I disagree with the conclusion on page 11, in 18 E -- I disagree with the conclusion on page 11, in E, 19 that an employer that is aware of the potential for 20 multiemployer pension plan withdrawal liability can make 21 changes to its controlled group, potentially mitigating 22 potential withdrawal liability. 23 I disagree with that to the extent that it 24 implies -- which I think it does -- that the employer 25 can do that with any degree of intentionality, as

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1 opposed to an accidental side effect. 2 I disagree -- I -- I have no opinion on the 3 premature conclusion on page 12 in F. That's not within 4 the scope of my opinions. 5 Q Do you know how many hours you spent preparing for your 6 deposition today? 7 A I will guess eight. 8 Q Are any of the publications that you have authored, 9 during the last 10 years, related to controlled group 10 liability? 11 A It's discussed in two of the case books. 12 Q Which are those? 13 A Employee Benefits and Executive Compensation that came 14 out in 2011. And then the one I'm a coauthor with 15 Langbein and Pratt, which came out in 2015. 16 And then let me just review the rest of the 17 list to see if any of the others -- 18 (Witness reviewing document.) 19 And I don't think any of the others were. 20 Q Have the courses that you have taught at the 21 University of Michigan, or the University of Alabama, 22 involved ERISA topics, and, in particular, pension 23 withdrawal liability, or controlled group liability? 24 A All of the above, and, in particular, I typically issue 25 a fairly detailed exercise on the brother-sister group.	1 A The same. Actually, I should amend that. I think at 2 least one or two years, the one at Alabama has been 3 titled "Deferred Compensation," but the content was the 4 same. 5 MR. HENGEVELD: All right. I don't have any 6 further questions. Thank you. 7 THE WITNESS: Thank you. 8 MR. GOULDER: The only thing I'll -- just to 9 put on the record is we had exchanged e-mails, Jeff, as 10 you recall, about whether Jaffee is obligated to 11 compensate, you know, Mr. Stumpff, not only for his time 12 here, but his time preparing. 13 It is our view that the requirement is that 14 they pay for the preparation time as well. We will 15 submit a bill for both. You'll pay what you're going to 16 pay, and if it's less than the full amount, we'll take 17 it up with the judge at the appropriate time. 18 MR. HENGEVELD: And, for the record, yes, we 19 did indicate that we would pay for the time for today's 20 deposition, sitting in the deposition, and we are 21 contesting that it is our obligation, under the federal 22 court rules, to provide compensation for his prep time. 23 THE WITNESS: So can I -- is this a good time 24 to raise the rate? 25 MR. GOULDER: Oh, go ahead.
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1 Q You've described yourself as a lecturer at the 2 University of Michigan -- 3 A Right. 4 Q -- law school? 5 A That's a title at U of M. 6 Q How does that relate to a professor, or an associate 7 professor, or assistant professor? 8 A It's far below them. So it's -- my understanding is 9 they have, you know, a whole hierarchy of professors, 10 low professors, associate professors, et cetera. 11 They have something they call an adjunct 12 professor, and I'm not sure what -- I honestly don't 13 know what the requisites are to be called an adjunct 14 professor. 15 And then they have a title called "lecturer," 16 and I think that's the function of their collective 17 bargaining agreements. 18 Q Are the courses that you provided at the University of 19 Michigan for credit? 20 A Yes. 21 Q What was the title of that class, or classes, that 22 you -- 23 A Employee Benefits and Executive Compensation. 24 Q And what about the title of the classes at the 25 University of Alabama?	1 THE WITNESS: So you handed me this exhibit, 2 and I just realized that I -- I, or someone, has made a 3 mistake. So this -- 4 MR. GOULDER: "This exhibit" being which? 5 THE WITNESS: The engagement letter. So it 6 recites a fee of \$450 an hour, and I said, in my report, 7 that it's \$400 an hour, and I don't know which is 8 mistaken. One of them is mistaken, but I just don't 9 know -- 10 MR. HENGEVELD: All right. 11 THE WITNESS: -- as I sit here. 12 I can find out. 13 MR. GOULDER: The bills would show. 14 THE WITNESS: That's true. The bills will 15 show it. 16 MR. HENGEVELD: To be clear on the record, 17 then, the invoice that I have, for September 2016, 18 reflects a \$400-an-hour rate. 19 THE WITNESS: That's what I thought. 20 MR. HENGEVELD: Is that the correct rate? 21 THE WITNESS: That's the correct rate. 22 MR. HENGEVELD: Thank you. 23 MR. GOULDER: Okay. We're finished. 24 MR. HENGEVELD: I have no further questions. 25 MR. GOULDER: We'll read and sign the

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1 transcript.	1 DEPOSITION ERRATA SHEET
2 (The deposition was concluded at 10:28 a.m.)	2
3 (Signature reserved.)	3
4	4 Our Assignment No. J0510055
5	5 Case Caption: Cohen v Jaffee, et al.
6 * * *	6
7	7
8	8 DECLARATION UNDER PENALTY OF PERJURY
9	9
10	10 I declare under penalty of perjury that I have read the
11	11 entire transcript of my deposition taken in the captioned
12	12 matter or the same has been read to me, and the same is true
13	13 and accurate, save and except for changes and/or corrections,
14	14 if any, as indicated by me on the DEPOSITION ERRATA SHEET
15	15 hereof, with the understanding that I offer these changes as
16	16 if still under oath.
17	17
18	18 Signed on the _____ day of _____, 2017
19	19
20	20 _____
21	21 Andrew W. Stumpff
22	22
23	23
24	24
25	25
Page 86	Page 88
1 STATE OF MICHIGAN)	1 DEPOSITION ERRATA SHEET
2) SS	2
3 COUNTY OF MACOMB)	3 Page No. _____ Line No. _____ Change to: _____
4 CERTIFICATE OF NOTARY PUBLIC	4
5 I, Kelli A. Murphy, a Notary Public in and	5 Reason for change: _____
6 for the above county and state, do hereby certify that	6 Page No. _____ Line No. _____ Change to: _____
7 this transcript is a complete, true, and correct record	7
8 of the testimony of the witness held in this case.	8 Reason for change: _____
9 I also certify that prior to taking this	9 Page No. _____ Line No. _____ Change to: _____
10 deposition, the witness was duly sworn or affirmed to	10
11 tell the truth.	11 Reason for change: _____
12 I further certify that I am not a relative or	12 Page No. _____ Line No. _____ Change to: _____
13 an employee of or an attorney for a party; and that I am	13
14 not financially interested, directly or indirectly, in	14 Reason for change: _____
15 the matter.	15 Page No. _____ Line No. _____ Change to: _____
16 In witness whereof, I hereby set my	16
17 hand this day, Friday, February 17, 2017.	17 Reason for change: _____
18	18 Page No. _____ Line No. _____ Change to: _____
19	19
20	20 Reason for change: _____
21	21
22	22
23	23 SIGNATURE: _____ DATE: _____
24	24 Andrew W. Stumpff
25	25



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<p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3 Page No. _____ Line No. _____ Change to: _____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. _____ Line No. _____ Change to: _____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. _____ Line No. _____ Change to: _____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. _____ Line No. _____ Change to: _____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. _____ Line No. _____ Change to: _____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. _____ Line No. _____ Change to: _____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21</p> <p>22</p> <p>23 SIGNATURE: _____ DATE: _____</p> <p>24 Andrew W. Stumpff</p> <p>25</p>	
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